

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cr-10039-STA
)	
PIERRE DEANDRE WOODS,)	
)	
Defendant.)	

ORDER DEEMING NOTICE OF APPEAL TIMELY FILED

Before the Court is Defendant’s Request to Have His Appeal Deemed Timely Filed, which was filed on August 21, 2020. (ECF No. 51.) The government responded in opposition (ECF No. 52), to which Defendant replied on August 25, 2020. (ECF No. 53.)

On October 16, 2019, a jury convicted Defendant of knowingly possessing a firearm which had been shipped and transported in interstate commerce after knowingly having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code Section 922 (g)(1). (ECF No. 39.) This Court sentenced Defendant to 60 months of incarceration followed by three years of supervised release and entered judgment to that end on March 13, 2020. (ECF No. 49.) Defense counsel subsequently filed a “Notice of Appeal” on March 13, 2020. (ECF No. 50.) Counsel erroneously filed the “Notice of Appeal” under the CM/ECF event filing code “Other” rather than the proper code of “Appeal,” and thus, the court clerk for the Sixth Circuit did not automatically receive electronic notification of the appeal. Defense counsel now moves the Court for an order deeming the notice timely filed and directing the Clerk to process her appeal.

Under Rule 4(b)(1)(A)(i) of the Federal Rules of Appellate Procedure, the notice of appeal must be filed within 14 days of entry of judgment. However, under Rule 4(b)(4), “[u]pon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the” original deadline. The government argues that the five-month delay between the original filing and the current request requires a showing of excusable neglect and that Defense counsel has not made any such showing.

However, the Sixth Circuit “has made clear that a document that clearly indicates an intent to appeal may suffice as notice, so long as it filed within the 40-day window and contains most of the necessary elements required for a formal notice of appeal as specified in Rule 3 of the Federal Rules of Appellate Procedure.” *United States v. Dotz*, 455 F.3d 644, 647 (6th Cir. 2006) (citing *United States v. Hoyer*, 548 F.2d 1271, 1273 (6th Cir.1977) (“where a document is filed within the [deadline] which represents a clear assertion of an intent to appeal, courts of appeals have the power to overlook irregularities where fairness and justice so require.”)). Here, Defendant filed a Notice of Appeal well within the original 14-day window that complied with the requirements of Rule 3—specified the party taking the appeal, designated the judgment being appealed, and named the court to which the appeal is taken. But for the coding mistake made by counsel, the appeal would have been processed correctly. Counsel for Defendant makes it clear that “all fault lies with Defense Counsel” for using the wrong CM/ECF event code, and the Court finds that the delay in recognizing the error was due to excusable neglect on the part of defense counsel. Therefore, because the “Notice of Appeal” was filed within the 14-day window, the Court finds that the notice of appeal was timely filed and **GRANTS** the request. The Court further **DIRECTS** the Clerk to

cure counsel's deficiency and take the necessary steps to process Defendant's Notice of Appeal (ECF No. 50) as if it had been correctly filed on March 13, 2020.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: August 28, 2020.